

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 48:020. Training and certification requirements for persons who perform lead-hazard detection or ~~[lead-hazard]~~ abatement.

RELATES TO: KRS 211.180, 211.900-211.905, 211.990, 211.994, 217.801

STATUTORY AUTHORITY: KRS 211.090(3), 211.9063, 211.9067, 211.9069~~[211.9061-211.9075]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.9063(3) requires the Department for Public Health to promulgate administrative regulations to establish the training and testing requirements and procedures for certification of persons who perform or offer to perform lead-hazard detection or ~~[lead-hazard]~~ abatement in target housing or child-occupied facilities. KRS 211.9063(4) requires the department to promulgate administrative regulations to provide for the enforcement of the certification program. KRS 211.9067 requires the department to promulgate administrative regulations to establish a schedule of fees for permits and certification and accreditation programs. KRS 211.9069 authorizes the department to establish terms and conditions for granting equivalent certificates. This administrative regulation establishes requirements, procedures, and fees for lead-hazard~~[-]~~ related permits, certification, and accreditation, establishes terms and conditions for equivalent certification, and establishes procedures for the enforcement of the certification program.

Section 1. Application Procedures. An applicant for certification shall submit to the department:

- (1) An application fee:
 - (a) In the amount established in Section 8 of this administrative regulation;
 - (b) By check or money order; and
 - (c) Made payable to the Kentucky State Treasurer;
- (2) An "Application for Individual Certification"~~[A document containing the following information:~~
 - ~~(a) Name of applicant;~~
 - ~~(b) Company;~~
 - ~~(c) Address;~~
 - ~~(d) Phone number;~~
 - ~~(e) The discipline for which the applicant is requesting certification];~~ and
- (3) The following documents:
 - (a) A current color photograph of the applicant~~[portrait]~~ at least two (2) by two (2) inches in size;
 - (b) A copy of a course completion certificate received from a course approved by the department; and
 - (c) Documentation demonstrating that the applicant has met the initial requirements established for the indicated discipline, as described in Section 4 of this administrative regulation.

Section 2. Departmental Review and Certification. (1) The department shall:

- (a) Review and approve or disapprove the application for initial certification or recertification; and

(b) Notify the applicant, within ten (10) working days of receipt of the application, of the results of the review.

(2) An applicant whose application for a discipline requiring a third-party examination is approved shall:

(a) Pay to the department ~~the~~^{an} examination fee in an amount established in Section 8 of this administrative regulation;

(b) Schedule with the department a date and time to take the examination;

(c) Be permitted to take the examination three (3) times within a twelve (12) month period of time;

(d) If the applicant fails the third examination, complete another approved course before re-applying for certification;

(e) If the applicant passes or is not required to take an examination, shall pay a discipline fee in an amount established in Section 8 of this administrative regulation.

(3) If an application is found to be deficient:

(a) The department shall notify the applicant that:

1. Specified supplemental documentation is required;

2. Additional education or training is required; or

3. Other specified information is necessary to determine the applicant's qualifications.

(b) The applicant shall:

1. Submit the requested information before qualifying to take the required examination or otherwise complete the application process; and

2. Within twelve (12) months, become certified by the department; or

3. Reapply for certification and pay additional specified fees.

(4) The department shall:

(a) Grant individual certification upon:

1. Satisfaction of the requirements for application approval and education or training; and

2. Payment of the discipline fee;

(b) Issue a certification certificate and identification card valid for a period of two (2) years from the date of completion of the required course of training.

Section 3. Certification Through Reciprocity. An applicant shall be considered for certification by the department under an equivalent certification agreement established at KRS 211.9069.

Section 4. Initial Requirements for Each Discipline. (1) Lead-hazard abatement worker shall successfully complete a departmental-approved lead abatement worker course.

(2) Lead-hazard inspector shall:

(a) Successfully complete an approved training course for inspectors;

(b) Have a high school diploma or equivalent; or

(c) Have a least one (1) year's related work experience.

(3) Lead-hazard risk assessor shall:

(a) Successfully complete an approved inspector course prior to the completion of an approved risk assessor course; and

(b) Have at least one (1) of the following:

1. Certification as an industrial hygienist, professional engineer, registered architect, or registered sanitarian;

2. A bachelor's degree, and one (1) year related work experience;

3. An associate degree, and two (2) years related work experience; or

4. A high school diploma or equivalent, and at least (3) years related work experience.

(4) Lead-hazard supervisor shall have:

- (a) Successfully completed an accredited training course for supervisors;
- (b) A high school diploma or equivalent; and
- (c) At least two (2) years related work experience.
- (5) Lead-hazard project designer shall have:
 - (a) Successfully completed an approved training course for supervisor prior to successfully completing an approved project designer course; and
 - (b) One (1) of the following:
 - 1. A bachelor's degree in engineering, architecture, or a related profession, and one (1) year related work experience; or
 - 2. Four (4) years related work experience.
- (6) Lead dust sampling technician shall have:
 - (a) Successfully completed an approved training course; and
 - (b) Successfully completed department proficiency requirements.

Section 5. Certification of Lead-hazard Company. (1) A company shall be certified by the department prior to conducting lead-hazard assessment and abatement activities and shall qualify as follows.

- (2) The company applying for certification shall:
 - (a) Pay an application fee as identified in Section 8 of this administrative regulation; and
 - (b) Submit an "Application for Company Certification" with the following information:
 - 1. A list of department certified employees; and
 - 2. Notarized affidavit stating that the company is knowledgeable of and will follow the work practice standards established by 902 KAR 48:040.

Section 6. Individual Recertification. (1) An applicant for recertification shall, at least thirty (30) days before the expiration date indicated on the certificate, submit to the department:

- (a) A completed application;
- (b) A fee established at Section 8 of this administrative regulation; and
- (c) Documentation of successful completion of an approved refresher course, for the appropriate discipline, taken within the last twelve (12) months of the certification period.
- (2) An applicant who applies for recertification after the time specified in subsection (1) of this section, but within six (6) months after the certification has lapsed, shall:
 - (a) Pass a department-approved refresher course; and
 - (b) Retake and pass the applicable third-party examination under the process identified in Section 2 of this administrative regulation.
- (3) An applicant who fails to reapply for certification after six (6) months from the date that the certification has lapsed shall:
 - (a) Pass an initial course; and
 - (b) Reapply through the certification process as identified in Section 2 of this administrative regulation.

Section 7. Company Recertification. A lead-hazard company shall apply for recertification by submitting:

- (1) The fee established by Section 8 of this administrative regulation;
- (2) A current listing, as of the date of recertification, of certification numbers identifying the employees engaged in lead-hazard activities; and
- (3) A notarized affidavit certifying that the company:
 - (a) Has continued to use the work practice standards established by 902 KAR 48:040; and

(b) Uses only departmental-certified employees to conduct lead-hazard activities in target housing and child-occupied facilities in the Commonwealth.

Section 8. Fee Schedule.

Type or discipline	Fee
Application	\$50
Third-party exam	\$50
Lead dust sampling technician	\$100
Lead-hazard project designer	\$300
Lead-hazard risk assessor	\$250
Lead-hazard inspector	\$200
Lead-hazard supervisor	\$150
Lead-hazard abatement worker	\$75
Lead-hazard company	\$200
Reissue of lost certificate or identification card	\$25

Section 9. Suspension, Revocation, Denial and Modification of Certificates. If the department suspends, revokes, denies, or modifies certification, it shall notify the certificate holder, in writing, of the following:

- (1) The legal and factual basis for the suspension, revocation, denial, or modification;
- (2) The commencement date and duration of the suspension, revocation, or modification;
- (3) Action, if any, which the certified person may take to avoid suspension, revocation, or modification, or to receive certification in the future;
- (4) The opportunity and method for requesting a hearing prior to final department action; and
- (5) Other information the department deems appropriate.

Section 10. Administrative Hearings. An administrative hearing shall be conducted in accordance with 902 KAR 1:400.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Individual Certification", 5/2021 edition; and

(b) "Application for Company Certification", 4/2021 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Environmental Lead Program, Division of Public Health Protection and Safety, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. or online at <https://chfs.ky.gov/agencies/dph/dphps/psb/Pages/lead.aspx>.

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 17, 2021

FILED WITH LRC: July 13, 2021 at 12:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on September 27, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by September 20, 2021,

five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until September 30, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the certification and training requirements for individuals and companies engaged in lead-hazard detection and abatement activities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure all those who engage in lead-hazard detection or abatement activities are properly certified by the cabinet. Lead is a toxic metal used in some paints made before 1978. Children are exposed to lead when older buildings are in poor condition. Today, childhood lead poisoning affects 310,000 children in the U.S. six years old and younger. Common renovations can create lead-hazards that can be harmful. Workers who disturb lead-based paint in structures built earlier than 1978 must be certified and follow work practices to keep children safe.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.9063 requires the Department for Public Health to create and administer a certification program for persons who perform or offer to perform lead-hazard detection or lead-hazard abatement services. All persons who perform or offer to perform lead-hazard detection or abatement services in target housing or child-occupied facilities shall be certified by the department. This administrative regulation establishes the certification process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure all persons who perform or offer to perform lead-hazard detection or abatement activities are properly certified and trained.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation incorporates by reference the application for certification for an individual seeking certification as a lead-hazard inspector, risk assessor, supervisor, project designer, abatement worker, or sampling technician; and incorporates by reference the application for lead-hazard company certification.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation simplifies the certification process and makes it easier for the regulated entities to obtain and maintain certification for lead-hazard activities.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.9063 requires the Department for Public Health to create and administer a certification program for

persons who perform or offer to perform lead-hazard detection or lead-hazard abatement services. The amendment to this administrative regulation ensures those seeking certification are aware of the documentation and training requirements for certification.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation ensures individuals and companies applying for certification for lead-hazard activities are aware of the required forms.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently there are fifty-four (54) companies, 295 individuals, and seven (7) training providers registered with the department. The amendment to this administrative regulation affects those currently registered with the department to perform lead-hazard activities, and affects all future registrants.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: Individuals seeking initial or renewal certification as a lead-hazard inspector, risk assessor, supervisor, project designer, abatement worker, or sampling technician will need to be aware of the documentation and training requirements. A company seeking initial or renewal certification as a lead-hazard company will need to be aware of the documentation requirements and will need to ensure all employees meet the individual certification and training requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not result in any increase in cost to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation makes it easier for the regulated entities to obtain and maintain certification for lead-hazard activities.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This is an ongoing program, there is no initial cost associated with this amendment.

(b) On a continuing basis: There are no additional costs associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Environmental Lead Program is funded through a mix of federal dollars and revenue received from the fees for certification, permitting, and training program accreditation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: An increase in fees or funding is not necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. The fee schedule outlined in Section 8 of this administrative regulation is not changed.

(9) TIERING: Is tiering applied? Tiering is not applied. While there are different training requirements depending on the level of certification sought, all persons who perform or offer to perform lead-hazard detection or lead-hazard abatement services in target housing or child-occupied facilities shall be certified by the department.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Public Safety Branch in the Division of Public Health, Protection and Safety.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 211.090(3), 211.9063, 211.9067, and 211.9069.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No change in revenue due to no change in fees.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No change in revenue due to no change in fees.

(c) How much will it cost to administer this program for the first year? No change in administration cost due to no change in work activities.

(d) How much will it cost to administer this program for subsequent years? No change in administration cost due to no change in work activities.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The federal Environmental Protection Agency (EPA) provides eighty-five (85) to ninety (90) percent of the funding for the Environmental Lead Program. This funding is dependent upon the current grant cycle. Program income received from fees and state general fund dollars cover the remaining balance. Funds used to cover program expenses cycles between federal monies and the state program income depending upon receipt of the federal allotments. Grant funding periods range from three (3) to five (5) years. The Environmental Lead Program has maintained this grant since the late 1990's. At this time, the EPA does not see an end to this grant program and continues to fund all eligible states.